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R 101159Z JUN 76

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TO RUEHC/SECSTATE WASHDC 1316

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LIMITED OFFICIAL USE SECTION 1 OF 2 EC BRUSSELS 05735

E.O. 11652: N/A

TAGS: DLOS, EEC

SUBJECT: EC COMMISSION POSITION ON LOS CONFERENCE

REF: EC BRUSSELS 4065

1. SUMMARY: THE EC COMMISSION HAS TRANSMITTED TO THE COUNCIL A LENGTHY DOCUMENT SETTING FORTH PROPOSED COMMUNITY POSITIONS FOR THE RESUMPTION OF THE LOS CONFERENCE IN NEW YORK. GALLAGHER OF THE COMMISSION WOULD WELCOME AN OPPORTUNITY TO DISCUSS THESE POSITIONS WITH OXMAN, L/OES, WHEN GALLAGHER IS IN WASHINGTON JULY 1-3. END SUMMARY.
2. THE EC COMMISSION HAS TRANSMITTED A LENGTHY DOCUMENT ON THE LAW OF THE SEA TO THE COUNCIL. ACCORDING TO COMMISSION DEPUTY DIRECTOR GENERAL FOR EXTERNAL RELATIONS GALLAGHER IT CONTAINS THE FOLLOWING MATERIAL.
3. GENERAL: THE COMMISSION PAPER TAKES OFF FROM THE PREMISE THAT EVERY EFFORT SHOULD BE MADE BY THE NINE TO ENSURE THE SUCCESS OF THE LOS SESSION AUGUST 2 TO SEPTEMBER 17, ALTHOUGH OF COURSE NOT AT ANY PRICE. THE COMMISSION CONTINUES TO MAINTAIN THAT MANY ASPECTS OF THE FINAL LOS CONVENTION WILL COVER AREAS WHERE THE COMMUNITY AS SUCH HAS COMPETENCE; THEREFORE, IT IS ABSOLUTELY NECESSARY THAT THE MEMBER STATES, AND THE COMMUNITY AS SUCH, SIGN AS PARTIES TO THE CONVENTION. ACCORDING TO GALLAGHER IF THIS POINT WERE NOT AGREED TO BY THE CONFERENCE IN NEW YORK, AND ONE OR MORE MEMBER STATES ATTEMPTED TO SIGN THE CONVENTION IN THE ABSENCE OF A COMMUNITY CLAUSE, THE COMMISSION WOULD GO TO COURT OVER THE ISSUE. GALLAGHER SAYS THAT ALL NINE MEMBER STATES AGREE THAT THERE SHOULD BE A COMMUNITY CLAUSE. (IN AN EARLIER CONVERSATION A UK PERM DEL SOURCE INDICATED THAT THE UK HAD NOT YET FORMALLY ACCEPTED THIS POSITION BUT THAT IT WAS GOING TO DO SO IN THE VERY NEAR FUTURE.) GALLAGHER AND PERM REP

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SOURCES EXPECT THE EC CALUSE TO CONTAIN TWO MAIN ELEMENTS: A SECTION INDICATING THAT CUSTOMS UNIONS, COMMUNITIES AND OTHER REGIONAL ECONOMIC GROUPS WHICH EXERCISE COMPETENCES COVERED BY THE PRESENT CONVENTION MAY BECOME PARTY TO THE CONVENTION; AND A CLAUSE TO THE EFFECT THAT WITHIN SUCH GROUPS THE MEMBER STATES MAY APPLY THEIR OWN INTERNAL RULES.

4. ACCORDING TO GALLAGHER, THE COMMISSION PAPER DOES NOT GO INTO AREAS WHERE THERE IS ALREADY GENERAL AGREEMENT BUT ATTEMPTS TO LAY OUT PROPOSED COMMON COMMUNITY POSITIONS WHERE THERE ARE STILL DIVERGENT POSITIONS AMONG THE MEMBER STATES.

5. 200 MILE ECONOMIC ZONE: THE COMMISSION RECOGNIZES THE NECESSITY OF AGREEMENT ON A 200 MILE ECONOMIC ZONE AND HAS REQUESTED THAT BELGIUM, WHICH HAS BEEN HOLDING OUT ON THIS POINT, AGREE TO JOIN TO OTHER EIGHT. THE COMMISSION IS RECOMMENDING THAT THE COMMUNITY MAINTAIN, AT LEAST FOR THE TIME BEING, THE AMENDMENTS REGARDING THE 200 MILE ZONE WHICH THE EC PUT FORWARD AT THE LAST SESSION. THE COMMISSION HAS DECIDED THAT ON BALANCE THE COMMUNITY SHOULD LEAN TOWARDS SOLUTIONS ACCEPTABLE TO COASTAL STATES AND IS NOW RECOMMENDING THAT ALL MEMBER STATES ACCEPT THE PROVISION IN THE REVISED SINGLE NEGOTIATING TEXT ON TREATMENT OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES. GALLAGHER RECOGNIZES THAT THIS WILL CAUSE PROBLEMS IN GERMANY AND THE BENELUX BUT HE IS HOPEFUL THAT THEY WILL COME AROUND.

6. THE COMMISSION NOW RECOMMENDS THAT THE COMMUNITY DROP ITS EARLIER AMENDMENTS TO ARTICLES 133 AND 134 OF THE REVISED SINGLE NEGOTIATING TEXT. ACCORDING TO GALLAGHER IF THE COMMUNITY HAD BEEN ABLE TO HAVE THE NORTH SEA EXCLUDED FROM ARTICLE 133 IT WOULD HAVE ACCEPTED A STRONGER VERSION OF ARTICLE 134 BUT UNDER THE PRESENT CIRCUMSTANCES PREFERENCES A WEAKER VERSION.

7. THE COMMISSION IS RECOMMENDING COMPULSORY PROCEDURES FOR THE SETTLEMENT OF DISPUTES WITHIN THE EXCLUSIVE ECONOMIC ZONE.

8. CONTINENTAL SHALF: CONSISTENT WITH ITS VIEW THAT THE COMMUNITY AS A WHOLE SHOULD CONSIDER ITSELF AS A COASTAL ENTITY THE COMMISSION IS RECOMMENDING THAT THE

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COMMUNITY ACCEPT THE PRINCIPLE OF COASTAL STATE CONTROL OF THE CONTINENTAL SHELF BEYOND 200 MILES. THE COMMISSION RECOMMENDS THAT THE MEMBER STATES ADOPT A COMMON POSITION ON THE METHOD OF FIXING THE OUTER LIMIT OF THE CONTINENTAL SHELF. WHILE THE COMMISSION HAS A MINOR PREFERENCE FOR WHAT GALLAGHER REFERRED TO AS THE CANADIAN AND THE IRISH PROPOSAL INVOLVING TRIANGULATION, IT WOULD NOT OBJECT TO OTHER SYSTEMS OF MEASUREMENT, INCLUDING A SCHEME LINKED TO THE THICKNESS OF THE SEDIMENT, AS LONG AS WHATEVER SYSTEM IS CHOSEN IS APPLIED CONSISTENTLY WITHIN THE COMMUNITY.

9. THE COMMISSION PAPER RECOMMENDS THAT THE MEMBER STATES AGREE THAT BENEFITS DERIVED FROM THE CONTINENTAL SHELF BEYOND THE 200 MILE LIMIT BE SHARED AMONG STATES. ACCORDING TO GALLAGHER THERE ARE DIFFERING VIEWS ON THIS POINT AMONG THE MEMBER STATES, WITH THE IRISH HOLDING THAT NO SHARING IS DESIRABLE, AND OTHERS WANTING TO PROVIDE FOR THE SHARING OF THE CONTINENTAL SHELF BENEFITS NOT ONLY BEYOND THE 200 MILE EXCLUSIVE ECONOMIC ZONE, BUT ALSO WITHIN IT. THE COMMISSION PROPOSAL IS AN ATTEMPT TO FIND A COMPROMISE BETWEEN THESE POSITIONS. THE COMMISSION PRESENTLY HAS AN OPEN MIND ON WHETHER THE BENEFITS SHOULD BE SHARED UNDER A SCHEME IMPLEMENTED BY THE INTERNATIONAL SEABED AUTHORITY OR BY EXISTING UN ORGANIZATIONS.

10. INTERNATIONAL SEABED: THE COMMISSION PROPOSES THE ACCEPTANCE OF THE PRINCIPLE OF THE CREATION OF AN INTERNATIONAL SEABED AUTHORITY AND ENTERPRISE AND ASKS THE BELGIAN GOVERNMENT TO WITHDRAW ITS OPPOSITION TO THIS PROPOSAL. ACCORDING TO THE COMMISSION PAPER THE COMPETENCE OF THE INTERNATIONAL SEABED AUTHORITY SHOULD BE RESTRICTED EXCLUSIVELY TO EXPLORATION AND EXPLOITATION OF THE SEABEDS, I.E. THE AUTHORITY SHOULD NOT BE INVOLVED IN SUCH ACTIVITIES AS TRANSPORT OR REFINING OF THE MINERALS LIFTED FROM THE SEABED. UNDER THE COMMISSION PROPOSAL THE ENTERPRISE WOULD OPERATE UNDER NORMAL COMMERCIAL PRINCIPLES AND WOULD DISPOSE OF MATERIAL MINED WITHOUT DISCRIMINATION AMONG CUSTOMERS. IN OTHER WORDS, GALLAGHER SAID, THE COMMISSION DOES NOT APPROVE OF SELLING MORE CHEAPLY TO THE LESS DEVELOPED COUNTRIES.

11. THE COMMISSION ACCEPTS THE PRINCIPLE THAT A MAJOR

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PART OF THE PROFITS FROM THE DEEP SEABEDS SHOULD GO TO THE DEVELOPING WORLD, GALLAGHER SAID HOW THIS WOULD BE DONE WAS NOT SPELLED OUT IN THE COMMISSION PAPER.

12, ACCORDING TO GALLAGHER THE COMMISSION STRONGLY OPPOSES EXEMPTING EITHER THE AUTHORITY OR THE ENTERPRISE FROM TAXATION AND CUSTOMS DUTIES. THIS OPPOSITION STEMS LARGELY FROM A FEAR THAT THE ENTERPRISE, PARTICULARLY IF IT WERE ALLOWED TO ENGAGE IN ANY FIRST-STAGE PROCESSING, MIGHT PUT OTHER PRODUCERS OUT OF BUSINESS IF IT WERE EXEMPTED FROM DUTIES AND VALUE ADDED TAXES. GALLAGHER NOTED THAT OFTEN FIRST-STAGE PROCESSING INCREASES THE VALUE OF A MINERAL BY A FACTOR OF SOMETHING IN THE NEIGHBORHOOD OF 100.

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13. THE COMMISSION RECOMMENDS THAT THE COMMUNITY AS SUCH
HAVE A SEAT ON BOTH THE AUTHORITY AND THE ENTERPRISE IN
LIEU OF THE MEMBER STATES. HE RECOGNIZES THERE WILL BE

CONSIDERABLE OPPOSITION FROM CERTAIN MEMBER STATES ON
THIS POINT. THE COMMISSION ARGUMENT IS THAT WHEREAS THE
COMMUNITY AS A WHOLE WOULD BE GUARANTEED A SEAT, INDIVIDUAL
MEMBER STATES MIGHT RISK LOSING SEATS TO WHICH THEY WERE
INITIALLY ENTITLED. FOR EXAMPLE, IF SEATS WERE ALLOCATED
ON THE BASIS OF INVESTMENT IT IS THEORETICALLY POSSIBLE
THAT THE GDR MIGHT SUBSTANTIALLY INCREASE ITS INVESTMENT
IN DEEP SEABED MINING LARGELY IN ORDER TO WIN A SEAT.
MOREOVER IF IT IS DECIDED THAT VOTING IN THE AUTHORITY
AND THE ENTERPRISE BE WEIGHTED, BY ALMOST ANY CRITERIA
THE WEIGHT OF THE EC VOTE WOULD BE MORE THAN THE COM-
BINED WEIGHT OF THE VOTE OF ANY 3 OR 4 MEMBER STATES.

14. THE COMMISSION PAPER RECOGNIZES THAT THE ISSUE OF
FINANCIAL ARRANGEMENTS FOR FINANCING DEEP SEA MINING IS
A THORNY ONE AND IT LIMITS ITS RECOMMENDATION TO A CALL
FOR A COMMON COMMUNITY POSITION IN THIS DEBATE. GALLAGHER
SAID THE COMMISSION HAD BEEN VERY CAREFUL TO FIND WHAT HE
CHARACTERIZED AS A NONCOMMITTAL FORMULA FOR AN ANTI-
DOMINANT CLAUSE. HE SAID THE COMMISSION HAD FALLEN WELL
SHORT OF SUPPORTING THE CURRENT FRENCH POSITION AND
CALLED ONLY FOR "SEARCH FOR SOLUTIONS TO PREVENT THE
CREATION OF DOMINANT POSITIONS."

ACCORDING TO GALLAGHER
 THE COMMISSION PROBLEM WITH THE US ARGUMENT THAT THERE
 WERE SO MANY PRIME MINING SITES AVAILABLE THAT NO ONE
 NATION OR GROUP OF NATIONS COULD IN FACT DOMINATE THE
 SCENE WAS THAT THE COMMISSION SIMPLY DID NOT HAVE THE
 FACTUAL KNOWLEDGE NEEDED TO ASSESS THE US CLAIM AND THERE
 WAS NO WELL ESTABLISHED INTERNATIONAL ORGANIZATION WITH
 SUFFICIENT EXPERTISE IN THIS AREA TO RENDER A RELIABLE

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INDEPENDENT OPINION.

15. REGARDING PROVISIONAL APPLICATION OF THE TREATY, THE COMMISSION RECOMMENDS A FORMULA WHICH PROVIDES THAT THE PROVISIONS OF THE TREATY WILL BE APPLIED IF TWO YEARS AFTER THE DATE OF THE OPENING OF THE TREATY FOR SIGNATURE AT LEAST 1/3 OF THE POTENTIAL SIGNATORIES HAVE NOTIFIED THEIR ACCEPTANCE OF PROVISIONAL APPLICATION. THE PROVISIONS OF THE TREATY WOULD ALSO APPLY WHEN 1/2 OF THE POTENTIAL SIGNATORIES HAVE NOTIFIED THEIR ACCEPTANCE EVEN IF THAT OCCURS BEFORE THE EXPIRATION OF TWO YEARS. ACCORDING TO GALLAGHER THIS WAS AN EFFORT TO COMPROMISE BETWEEN THE WIDELY DIVERGENT VIEWS OF THE FRENCH AND THE US ON THIS POINT.

16. THE COMMISSION RECOMMENDS ACCEPTANCE OF THE CURRENT VERSION OF THE REVISED SINGLE NEGOTIATING TEXT ON THE COMPULSORY SETTLEMENT OF DISPUTES.

17. ENVIRONMENT: THE COMMISSION FAVORS THE NOTION THAT FLAG STATES HAVE PRIORITY IN ENFORCEMENT OF ENVIRONMENTAL ISSUES, SO LONG AS COASTAL STATES ARE GRANTED CONTROL OF A 50 MILE ZONE IN WHICH THEY HAVE PRECISE, BUT LIMITED, RIGHTS. ACCORDING TO GALLAGHER, WHAT THE COMMISSION IS GETTING AT HERE IS ESSENTIALLY THAT COASTAL STATES HAVE PRIMARY RIGHTS WHEN VIOLATORS ARE APPREHENDED IN FLAGRANTE DELICTO WITHIN 50 MILES.

18. SCIENTIFIC RESEARCH: THE COMMISSION RECOMMENDS THAT MEMBER STATES ACCEPT THE PRINCIPLE THAT THE CONSENT OF THE COASTAL STATE IS REQUIRED FOR SCIENTIFIC RESEARCH PERFORMED IN ITS ECONOMIC ZONE WHEN THE FOLLOWING CONDITIONS ARE MET:

- A) THE CONDITIONS UNDER WHICH THE COASTAL STATE MIGHT OBJECT ARE MORE LIMITED THAN IN THE PRESENT TEXT.
- B) PROCEDURES FOR CONSULTATION EXIST. ACCORDING TO GALLAGHER THE COMMISSION ATTACHES CONSIDERABLE SIGNIFICANCE TO THE NEED FOR A FORMAL CONSULTATION PROCEDURE WHICH COULD ELIMINATE THE NEED FOR RESORTING TO PROCEDURES FOR DISPUTE SETTLEMENT.
- C) THAT WHATEVER GENERAL SYSTEM IS AGREED TO FOR THE SETTLEMENT OF DISPUTES, IT SHOULD APPLY EQUALLY TO DISPUTES IN THE SCIENTIFIC RESEARCH AREA.

19. TRANSFER OF MARINE TECHNOLOGY: THE COMMISSION IS

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FOR ALL PRACTICAL PURPOSES PREPARED TO ACCEPT THE ACTION
CONTAINED IN THE REVISED SINGLE NEGOTIATING TEXT.

20. SETTLEMENT OF DISPUTES: THE COMMISSION FAVORS A COM-
PULSORY SYSTEM FOR THE SETTLEMENT OF DISPUTES. ACCORD-
ING TO GALLAGHER THE COMMISSION WISHES TO AVOID A SITU-
ATION WHERE A CONTRACTING PARTY BECOMES SUFFICIENTLY
AGGRIEVED BY ANOTHER CONTRACTING PARTY THAT THE AGGRIEVED
PARTY FEELS CONSTRAINED TO BRING AN ACTION WHICH WOULD
GIVE THE OTHER PARTY THE CHOICE OF HOW THE DISPUTE WOULD
BE SETTLED. GALLAGHER BELIEVES THIS WOULD BE AVOIDED
IF PROVISION WERE MADE FOR DISPUTE TO BE SETTLED BY
ARBITRATION IN THE EVENT THAT EITHER PARTY REQUESTED IT.

21. OVERSEAS STATES AND TERRITORIES: TRANSITIONAL
CLAUSE. ACCORDING TO GALLAGHER THE COMMISSION FAVORS
THE FRENCH AND DUTCH AMENDMENTS TO THE ORIGINAL ARTICLE
136. GALLAGHER BELIEVES THAT THE FRENCH FEEL SO STRONGLY
ABOUT THIS ISSUE THAT THEY MIGHT NOT ADHERE TO A LAW OF
THE SEA AGREEMENT THAT DID NOT SATISFY THEM ON THIS
POINT. THIS BEING THE CASE, GALLAGHER ARGUES, IT THEN
BECOMES A COMMUNITY ISSUE SINCE IF THE MEMBER STATES
CANNOT ADHERE, THE COMMUNITY AS A WHOLE WOULD NOT BE
ABLE TO ADHERE EITHER. GALLAGHER CONSIDERS IT ESSEN-
TIAL THAT THE DANGERS OF HOLDING TO A PURELY POLITICAL
LINE ON THIS ISSUE BE EXPLAINED TO THE GROUP OF 77.

22. A UK SOURCE (PROTECT) HAS TOLD US THERE WAS NOT A
PRAYER THAT THE COUNCIL WOULD HAVE AN OPPORTUNITY TO DO
ANY MORE THAN TAKE NOTE OF THE COMMISSION PAPER BEFORE
THE BEGINNING OF THE AUGUST 2 SESSION. THEREFORE FROM
ONE POINT OF VIEW THE PAPER WOULD HAVE NOT STATUS. ON
THE OTHER HAND, IT MAY BE THAT IF THERE IS NOT TIME FOR
THE COUNCIL TO TAKE ISSUE WITH ELEMENTS OF THE PAPER
CONSIDERED UNSATISFACTORY BY CERTAIN MEMBER STATES, THE
PAPER WOULD END UP, FOR LACK OF ANYTHING BETTER, WITH A
CERTAIN STATUS IN NEW YORK. ALTHOUGH THE MEMBER STATES
WOULD NOT FEEL BOUND BY IT, THE COMMISSION, IN ALL
LIKELIHOOD, WOULD TREAT THE PAPER ESSENTIALLY AS A
NEGOTIATING MANDATE.

23. GALLAGHER PLANS TO BE IN WASHINGTON FROM JULY 1,
FROM ABOUT 11:30 A.M., THROUGH ABOUT 5 P.M. ON SATUR-
DAY, JULY 3 ON WHAT HE DESCRIBED AS A LARGELY PRIVATE

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TRIP. OF OXMAN WOULD LIKE TO SEE HIM, GALLAGHER BELIEVES SUCH A MEETING WOULD BE USEFUL. ACCORDING TO GALLAGHER, SPAAK'S DEPUTY, LENG, WILL BE HANDLING HIS SCHEDULING AND ANYTHING OXMAN AND LENG WORK OUT WOULD BE ACCEPTABLE TO GALLAGHER. IF NOTHING CAN BE AGREED ON THURSDAY OR FRIDAY, GALLAGHER WOULD BE WILLING TO SEE OXMAN ON SATURDAY. HINTON

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